

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

TITUS WADE HOBBS,)	C.A. No. CPU5-10-001252
)	
Appellant,)	
v.)	
)	
KENT COUNTY SPCA, INC.)	
DELAWARE ANIMAL CARE & CONTROL,)	
)	
Appellees.)	

**DECISION ON APPEAL FROM
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL,
DIVISION OF FISH AND WILDLIFE,
*DOG CONTROL PANEL***

Submitted: December 15, 2010

Decided: February 4, 2011

REVERSED

Titus W. Hobbs, *pro se*, 6636 Mud Mill Road, Camden, DE 19934, Appellant.

Robert F. Phillips, Esquire, *Deputy Attorney General*, 820 North French Street, 6th Floor,
Wilmington, DE 19801, for Appellees.

Reigle, J.

This is a civil appeal from the decision of the Dog Control Panel (“the Panel”) to euthanize a dog owned by Titus W. Hobbs (“Mr. Hobbs”). After reviewing the record presented to the Court by the Panel and the letters and briefs of both parties, this Court has determined that the decision of the Panel shall be *Reversed*.

Underlying Facts and Dog Control Panel Hearings

Appellant, Mr. Hobbs, owns a female black Shepherd mix named Raven, who is approximately three years old. There have been several contacts between Mr. Hobbs and Animal Control officers with respect to his dog, Raven. They follow chronologically.

I. Determination as Potentially Dangerous

On April 2, 2008, July 3, 2008 and September 14, 2008, it was alleged that Raven attacked three separate individuals. Following a hearing on October 2, 2008, the Panel issued a decision and found Raven to be a “potentially dangerous dog.” The Panel’s order was rendered on a typed form with some items circled, other items crossed out and items where blanks were filled in. It stated, in pertinent part:

Based upon evidence and testimony provided to this Panel during the hearing held this day, under Delaware Code, Title 7, Chapter 17, Subchapter 3, §§ 1732-1736, the DE Dog Control Panel finds Raven, owned by Titus Hobbs, to be in violation of § 1736 and has been found Potentially Dangerous.

See Panel Decision, October 2, 2008. Due to this finding, the Panel ordered Mr. Hobbs to comply with certain conditions. They included that the dog must be spayed, that while on the dog owner’s property, it must be kept indoors or within a securely fenced yard and when off the premises, that the dog be restrained by a substantial chain or lease or be under the control of a responsible adult. Del.Code Ann. tit. 7 § 1736(b)(1)(2)(3). As of October 2, 2008, Raven was labeled a “potentially dangerous dog” and Mr. Hobbs was required to satisfy the conditions.

II. Dog At Large Report

Over one year later, on December 8, 2009, Animal Control officers discovered Raven wandering at large near Mr. Hobbs' residence at 6636 Mud Mill Road, Camden, Delaware. The officers determined that Mr. Hobbs was Raven's owner and Mr. Hobbs was questioned about the loose dog. Mr. Hobbs blamed someone else for allowing his dog to leave his premises. In its decision, the Panel claims that Mr. Hobbs was found guilty of the law and fined. In his testimony at the hearing, Mr. Hobbs claimed that he was not convicted.

III. Alleged Subsequent Dog Bite

Four months later, on April 8, 2010, Ms. Jennifer Pryor reported to Animal Control officers that she was bitten by a dog while she was walking in the street in front of Mr. Hobbs' residence on Mud Mill Road. Officer Bartlett responded to the scene to investigate. He observed and photographed puncture wounds and scrapes on Ms. Pryor's leg. Ms. Pryor identified Mr. Hobbs' residence. Officer Bartlett responded to the property and observed a dog that he identified as Raven lying near the front porch. He approached the dog but she charged at him and he called for back up. Eventually, with the assistance of Mr. Hobbs' mother, Sandra Hobbs, who also arrived on the scene and lives in the residence, and a neighbor, Robert Sawyer, Raven was captured. It was held by Animal Control.

In order to secure the return of a dog that has been deemed "dangerous" by Animal Control, a dog owner must request and obtain a hearing in front of the Dog Control Panel. A hearing was held on May 13, 2010. After the hearing, the Panel deliberated in executive session, and found Raven to be dangerous with euthanasia ordered.

The Panel's order was rendered by a typed form with some items circled, other items crossed out and items where blanks were filled in. It stated, in pertinent part:

Based upon the preponderance of evidence and testimony provided to this Panel during the hearing [sic] held today, 13 May 2010, the Panel finds Raven (as described above), owned by Titus Hobbs, to be in violation of § 1735(a) – Dangerous, with euthanasia ordered as per subsection § 1734(c).

See Panel Decision, May 13, 2010.

Appeal to Court of Common Pleas

By statute, if it is determined by the Panel that the dog is dangerous and euthanasia is ordered, “the owner may appeal the Panel’s decision to the Court of Common Pleas” Del.Code. Ann. tit. 7 § 1734(d). Mr. Hobbs appealed to this Court, as self-represented litigant, which acted as a stay of the Panel’s decision. § 1734(d). A letter, dated August 16, 2010, was accepted as Mr. Hobbs’ Opening Brief. The State filed an Answering Brief to uphold the decision of the Panel on September 14, 2010. A responsive letter, dated September 24, 2010 was accepted as Mr. Hobbs’ Reply Brief.

The Court wrote to Deputy Attorney General Phillips on October 4, 2010 requesting clarification of the record. On October 11, 2010, he answered the questions propounded.

Subsequently, on October 29, 2010, Mr. Hobbs submitted a letter to the Court containing additional legal argument and factual assertions. Deputy Attorney General Phillips followed up on November 17, 2010 asking that either Mr. Hobbs additional arguments not be addressed by this Court or that he be permitted to follow additional argument as well in the form of a sur-reply brief. Mr. Hobbs submitted another letter on December 15, 2010 asking that the Court allow both sides to be heard on additional argument rather than strike his brief. The Court has declined to consider any of Mr. Hobbs’ new factual assertions outside of the scope of the Panel hearing. His additional legal argument after his Reply Brief will not be considered by the Court. For this reason, no additional filing by Mr. Phillips is necessary.

The Dog Control Panel Hearing

Dog Control Panel hearings are not as formal as trials. Rather, they are informal hearings run by members of a lay board with expertise in the subject matter and attended by parties who are either members of law enforcement or self-represented litigants. Conformity to the rules of evidence is not required. Hearsay evidence is allowed but it may not be the sole evidence relied upon in the Panel's determination. Del.Code Ann. tit. §1734(b). In addition, the introduction of improper evidence by the Panel or a lack of due process during the hearing can amount to reversible error. *Roberts v. Kent County SPCA, Inc.*, 2010 WL 2513424 (Del.Com.Pl. 2010).

The Record

There are two types of appeal to the Court of Common Pleas. Some matters come to this court as *appeals de novo*, which means that a new trial is held and the judge makes a new decision on the facts. Other matters are *appeals on the record*, which means that the Court does not reconsider the facts, but rather reviews the record from the board below and determines if the decision will be affirmed based upon the applicable standard of review. *See generally* Del. C.C.P. Civ. Rules Proc. 71.1, 72.2.

Since this Dog Control Panel appeal is not *de novo*, but rather *on the record*, this Court is limited to a review of the record, which is the transcript of the Panel hearing and any exhibits viewed by the Panel members at that hearing. In order for this Court to review the decision of the Panel, it must have the full record. The Court of Common Pleas Civil Rules provide that on such appeals, upon its request to the custodian of record, a certified copy of the record of the proceedings below be sent to the Court. Del. C.C.P. Civ. Rules Proc. 72.1.

Because of the less formal nature of the Dog Control Panel which does not have a specific custodian for its records, Deputy Attorney General Mr. Phillips, responded to the

Court's request to make the record as complete as possible. Mr. Phillips informed the Court that he is not the attorney for the Dog Control Panel nor is he the custodian of its records; however, the Court greatly appreciates his assistance in this regard.

There are essentially three problems with the record from the Dog Control Panel. First, it is very difficult to match the provided copies of the photographs with the references in the transcript. Exhibits were not marked with letters or numbers. In several places, a witness testified to "pictures" that were taken and described the scene but did not identify the "pictures" by an exhibit number or even denote how many photographs were being reviewed by the witness and the Panel. Not all of the photographs were dated and there was testimony regarding two incidents, December 8, 2009 and April 8, 2010, in which photographs were taken of Mr. Hobbs' property and dog. It was difficult to tell which photographs went with which incident. There is one set of photographs of a woman and a dog that appears to have been taken near Mr. Hobbs' property but the photographs do not appear to be referenced in the transcript and neither the woman nor the dog are identified in the transcript. It is unclear if the photographs were relevant at all or how it fit into the facts of the case.

Second, there are attachments to the Decision by the Panel dated May 13, 2010. They are numbered one through seven and they appear to have all been provided to this Court. Some of them are referenced in the transcript. It would be easier to follow the transcript if these documents were identified as Exhibits during testimony.

Third, the transcript makes references to a "folder" that was provided to the Panel members and also to Mr. Hobbs before the hearing. Mr. Phillips did provide some information to the Court regarding the "folder." It is unclear if the Court was provided all of the contents as part of the record from the Panel. Two documents, which are referred to in the transcript and

decision, were not provided to the Court. They include the expired dog license and the expired rabies inoculation. It is unclear if they were contained in the “folder.” Since the record was either incomplete or confusing, it made it difficult for this Court to review the Panel’s decision and therefore only items properly identified have been considered.

Burden of Proof Discussion

After the hearing, “[t]he Panel may declare a dog to be dangerous if it finds by a *preponderance of the evidence* that the dog killed or inflicted physical injury upon a human being. Del.Code Ann. tit. 7 § 1732(a)(2). (emphasis added). *See also Leech v. Caldwell*, 2000 WL 33653457 (Del. Com. Pl.) at *3 citing *Hill v. Ginn*, 43 A.2d 608 (Del. Super. 1899).

The Panel’s Decision

In this case, the Panel found that Ms. Pryor suffered puncture wounds and scrapes as a result of Raven’s attack upon her. Photographs of the bites were introduced at the hearing. The Panel found that Ms. Pryor identified Raven as being the dog that bit her. The Panel further found that euthanasia would be ordered for Raven. The Panel articulated several aggravating factors in addition to the bite. First, the dog was already labeled “potentially dangerous” as a result of a prior hearing before the panel in October of 2008. A “potentially dangerous dog” is returned to the owner with certain statutory conditions in place that must be followed for the owner to keep the dog. In the Panel’s decision it specifically notes that there was a requirement that the dog be kept indoors or within a securely fenced yard from which she could not escape. The dog was found running at large in December of 2009.¹ In April of 2010, it was alleged that Raven was at large when she bit Ms. Pryor. An open window was observed at the residence which enabled Raven to exit the house freely which demonstrated a callous disregard and a

¹ Mr. Hobbs asserts that there was no conviction for this offense, however, the facts of the incident can still be used as part of an administrative hearing where the standard is preponderance of the evidence and hearsay is admissible.

pattern of non-compliance by Mr. Hobbs of the requirements of managing a potentially dangerous dog. In addition, the Panel considered as aggravating factors that Raven's rabies vaccination and dog license status were both expired as an additional threat to the community. The Panel pointed to the ongoing violations of the potentially dangerous dog conditions, the severity of the incident and the request of Animal Control that the dog be deemed dangerous and euthanized.

Standard of Review

An appeal from the Dog Control Panel is conducted according to the provisions governing judicial review of case decisions under the Administrative Procedures Act. Del.Code Ann. tit. 7 § 1734(d). The standard of review is set forth in the Administrative Procedures Act. It states, "The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency." § 10142(d). See also Downs v. Emory, 2007 WL 3231611, at *2 (Del. Com. Pl.) (citing Mooney v. Benson Mgmt. Co., 451 A.2d 839, 840 (Del. Super. 1982).

Substantial evidence is further defined as "such relevant evidence as a legal mind may accept as adequate to support a conclusion." Downs at *2 (citing DiFilippo v. Beck, 567 F. Supp. 110, 113 (D. Del. 1983).

In addition, "[t]he reviewing Court must also determine whether the findings of the Panel are free from legal error and the product of an orderly and logical deductive process." Downs, at *2 (citing In re Surcharge Classification 0133 ex rel. Del. Comp. Rating Bureau, 655 A.2d 295, 299 (Del. Super. 1994).

Discussion

“The Panel may declare a dog to be dangerous if it finds by a preponderance of the evidence that the dog . . . inflicted physical injury . . . upon a human being.” Del.Code Ann. tit. 7 § 1735. This Court finds that there is insubstantial evidence to support the Panel’s conclusion, in this case, that Raven inflicted physical injury to Jennifer Pryor and that Raven is therefore a “dangerous dog.” The evidence presented to the Panel members was inadequate to support its conclusion.

Ms. Pryor was not present at the hearing. There was hearsay testimony by two Animal Control Officers that Ms. Pryor stated to them that she was bitten by a German Sheppard mix dog while walking in front of Mr. Hobbs’ house on Mud Mill Road on April 8, 2010. There was also testimony by the officers that Ms. Pryor identified the property from which the dog came on that date and the officer further identified Mr. Hobbs’ residence. There was also sufficient testimony that the dog at Mr. Hobbs’ residence when the officers arrived that day was Raven, because the dog was known to the officers.

The officers also testified, through hearsay, that Ms. Pryor had related an incident earlier that same day where she saw three dogs being walked by a woman from that same property who she knew as Vonda.² In addition, there was direct testimony from Mrs. Sandra Hobbs that she resides with Mr. Hobbs, who is her son and that she has a daughter named Vonda who has access to the premises.

The Panel’s acceptance of all of these facts, through direct or hearsay testimony, is permissible. However, nowhere in the transcript or documents provided to this Court is there an assertion that Ms. Pryor identified Raven as in fact being the dog that bit her on April 8, 2010. Rather, she identified the premises from which the dog came. The Animal Control officers seem

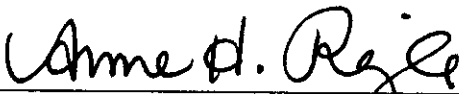
² The incident report listed the name Fonda.

to have made the connection that it was Raven because Raven was a dog owned by the owner of that property, Mr. Hobbs, and she matched the general description given by Ms. Pryor. Mr. Hobbs' history with Animal Control and Raven's previously declaration of being "potentially dangerous" may also have lead the officers to conclude that it was Raven that bit Ms. Pryor. If there were no other dogs in the vicinity on the date in question, this might have been sufficient to meet the standard of proof. However, the victim, Ms. Pryor, made a statement, which was testified to at the hearing through hearsay, that there were three dogs being walked by Vonda earlier that day. If Ms. Pryor did clearly identify Raven as the dog that bit her to Animal Control, then that identification was not clearly conveyed at the hearing through testimony and part of the transcript or was not introduced in an exhibit that was made part of the written record for this Court's review.

Decision

The Panel's findings that Animal Control proved by a preponderance of the evidence that Raven injured Ms. Pryor on April 8, 2010 and therefore could properly be deemed to be a dangerous dog under the Delaware Code is not supported by substantial evidence and therefore not free from legal error under Delaware statutes and case law. For the foregoing reasons, the decision of the Panel is *Reversed*. In addition, Mr. Hobbs cannot be held liable for costs of impoundment under Del.Code Ann. tit. 7 § 1737.

IT IS SO ORDERED, this 4th day of February, 2011.



The Honorable Anne Hartnett Reigle